

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC., PLATINUM
MOTORS, INC., and MATTINGLY AUTO
SALES, INC., individually and on behalf of
other members of the general public similarly
situated,

Plaintiffs,

v.

COX AUTOMOTIVE, INC., NEXTGEAR
CAPITAL, INC. F/K/A DEALER SERVICES
CORPORATION, successor by merger with
Manheim Automotive Financial Services, Inc.,
and JOHN WICK,

Defendants.

Case No. 1:14-cv-01589-TWP-DKL

DECLARATION OF JEFF MODJESKI

1. I am over twenty-one years of age, of sound mind, and competent to make this declaration.

2. I am the General Manager at Manheim New Orleans, a motor vehicle auto auction, and have been in this position for approximately one and a half years, as well as from 2008-2011. From 2011-2015, I was the General Manager at Manheim auctions in Fort Lauderdale, FL, Palm Beach, FL, and Dallas, TX. My responsibilities include management of auction operations and dealer and lender relations. This Declaration is based on my own personal knowledge and a review of our auction business records and procedures.

3. If a dealer wins the bidding for a vehicle, payment is due to our auction on date of sale.

4. If a dealer wants to pay for a vehicle using a third-party floor plan, like NextGear Capital, Inc. f/k/a Dealer Services Corporation, our auction will confirm the dealer has credit availability with the designated floor planner. Once the credit is approved, the floor plan company is obligated to pay our auction. That approval happens on the day of sale, before the dealer leaves the auction with the vehicle, absent special arrangements with us.

5. Procedurally, we typically settle up with floor planners in bulk, but the floor planner is on the hook to us from the date of sale. With NextGear, they fund us the night of sale and do not wait for title or other conditions.

6. Without immediate payment, a floor plan, or other special arrangement with us, we would not allow a dealer to leave the auction with the vehicle.

7. Our auction has access to Auction Insurance Agency's uninsurable list, sometimes called the "KO Book." The KO Book is a useful warning that a dealer's checks may involve heightened risk to our auction. However, it remains entirely within our discretion whether to allow a dealer listed in the KO Book to attend our auction.

8. This declaration describes our auction processes now and dating back until at least 2009.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and accurate to the best of my knowledge.

This 24 day of April, 2017.



Jeff Modjeski